



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,081	03/28/2001	Michael E. Furry	FRR 301	4028

7590 04/02/2004

Kolisch, Hartwell, Dickinson,  
McCormack & Heuser  
200 Pacific Building  
520 S.W. Yamhill Street  
Portland, OR 97204

EXAMINER

SUHOL, DMITRY

ART UNIT	PAPER NUMBER
----------	--------------

3712

17

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/820,081

Applicant(s)

FURRY, MICHAEL E.

Examiner

Dmitry Suhol

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,9,57,58 and 60-70 is/are pending in the application.
- 4a) Of the above claim(s) 62,63,67 and 70 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4,6,60 and 61 is/are allowed.
- 6) ☒ Claim(s) 5,8,9,64-66,68 and 69 is/are rejected.
- 7) ☒ Claim(s) 57 and 58 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group 1 in Paper No. 16 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Furthermore, upon electing the species of Group I applicants have stated that claims 1-10, 32, 57, 58, 60, 61, 64, 65, 66, 68, 69 read on this species, in response the examiner points out (as stated in paper no. 14) that claim 32 has been canceled by the applicants in paper no. 9 and is no longer pending in the application and therefore will not be examined. Additionally claims 7 and 10 have been canceled in papers no. 9 and 5, respectively and will also not be examined.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 64-66 and 68-69 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 5, the metes and bounds of the claim can't be determined due to the phrase "and/or".

Regarding claims 64-66 and 68-69, the claims are improperly dependent upon canceled claim 32. An appropriate dependency can't be ascertained and since applicants have not addressed the issue of claim 32 mentioned in the prior office action.

Claims 64-66 and 68-69 are considered as best understood since the examiner can't ascertain an appropriate dependency.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9, 64-66 and 68-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Putterman '492 in view of Spooner '010. Putterman discloses an educational game containing most of the elements of the claims including with reference to claim 8, a set of characters (elements 20 and 27) being associated with a predetermined phoneme of a language and having a character name including the phoneme (col. 8, lines 22-25), a learning device (read onto cards 11 and 28) configured to display at least one of the characters along with an associated letter (figures 2 and 4, elements 16) and pronunciation symbol (elements 14 including the phonetic symbol)

Art Unit: 3712

corresponding to the phoneme. The pronunciation symbol being separate from the letter, as required by claim 8, is shown in figures 2 and 4.

Although Putterman discloses most of the elements of the claims, as stated above, and further points out that the shape of his cards (11 and 28) is not limiting (col. 7, lines 12-15), the reference fails to explicitly teach a wheel or disk shape as required by claim 8. However, Spooner discloses that it is known to make cards in a variety of shapes including a round shape. Therefore it would have been obvious to one having ordinary skill in the art, at the time of the claimed invention, to have provided the cards of Putterman in a round/wheel/disk shape for the purpose of amusement, especially since Putterman clearly states that the shape of his cards may vary and is not limiting (col. 7, lines 12-15).

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Allowable Subject Matter***

Claims 1-4, 6 and 60-61 are allowed.

Claims 57-58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

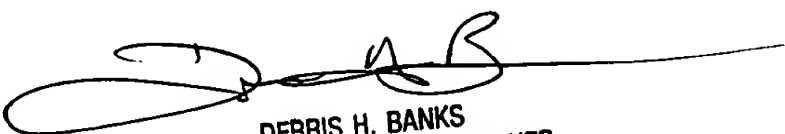
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 703-305-0085. The examiner can normally be reached on Mon - Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ds



DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700